IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.R. No.4028 of 2007
Date of Decision:14.08.2007

Director and Warden of Fisheries, Punjab, Chandigarh
.....Petitioner

Vs.

Sant Kaur @ Basant Kaur and another
.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Arvind Mittal, Addl. AG, Punjab for the petitioner.

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The challenge in the present petition, filed under Article 227 of the Constitution of India, is to set aside order dated 7.5.2007 passed by the Rent Controller, Jalandhar. Vide the impugned order, the learned Rent Controller has dismissed the application filed by the petitioner under Section 5 of the Limitation Act for condonation of delay in filing the application for leave to defend under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, `the Act').

Briefly, the facts as noticed in the impugned order are that, in a petition filed under Section 13-B of the Act, the service of the petitioner was complete on 5.2.2007. In terms of the provisions of Section 18-A of the Act, an application for leave to defend could be filed within 15 days thereof and in the absence, the landlord was entitled to have the order for ejectment passed in his favour. The petitioner failed to file the application within the period prescribed and the same was filed only on 5.3.2007 with an application for condonation of delay stating the reason that because of the elections in the State, the officials of the Department were on election duty and for that reason, the application for leave to defend could not be filed within the period prescribed. The application was contested by the respondent- landlord. After hearing learned counsel for the parties, the prayer made by the petitioner for condonation of delay in filing the application was declined by the Rent Controller on the ground that the provisions of Section 18-A of the Act, read with Schedule 2 thereof,

providing the period of 15 days for filing the application for leave to defend is mandatory and any delay in filing the application is not condonable. While rejecting the prayer, the learned Rent Controller, relied upon judgments of this Court in **Babu Ram v. Naresh Kumar,** 2006 (3) RCR (Civil) 789 and **Paramjit Singh v. Amarjit Singh Walia,** 2007(1) RCR (Civil) 192.

I have heard learned counsel for the petitioner and perused the order passed by learned Rent Controller. Learned counsel for the petitioner relied upon a Single Bench judgment of this Court in **S.Manohar Singh v. S.Aridaman Singh Dhillon,** (2003-1) 133 PLR 231 to submit that this Court had taken the view that the provisions of Section 5 of the Limitation Act are applicable in proceedings under Section 13-A of the Act by holding an earlier Division Bench judgment of this Court in **Ashwani Kumar Gupta v. Shri Siri Pal Jain,** (1998-3) 120 PLR 170 to be per incuriam. However, he could not deny the fact that subsequent thereto another Bench of this Court in **Babu Ram's case (supra)** after considering the Division Bench judgment in **Ashwani Kumar Gupta's case (supra)** and subsequent Single Bench judgment in **S.Manohar Singh's case (supra)** and various other judgments of Hon'ble the Supreme Court on the issue held that the provisions of Section 5 of the Limitation Act are not applicable for proceeding under Section 13-A of the Act. The relevant part of the judgment in **Babu Ram's case (supra)** is extracted below:-

> "The position, therefore, is that the provisions of the Limitation Act in respect of an application for condoning the delay to file an application for leave to contest an application filed under Section 13-A(2) of the Act which is required to be filed with 15 days of the receipt of summons, are not applicable. The position as pleaded by the petitioner is that the tenant-respondent did not file an application for seeking leave to contest the petition filed under Section 13-A of the Act within the period of 15 days from the date of service of summons. The respondent, however, subsequently on 7.2.2005 submitted an application for condoning the delay and for grant of leave to defend the case. The application being barred by time, the Rent Controller had no jurisdiction to grant the leave to contest the

petition and thereby impliedly condone the delay under Section 5 of the Limitation Act. The said provision is inapplicable to the procedure provided in respect of right to recover immediate possession of `residential' or `scheduled building' in terms of Section 13-A of the Act. The provisions of the Limitation Act having been held to be inapplicable in the matter of procedure provided for seeking recovery of immediate possession of `residential' or `scheduled building' in terms of Section 13-A of the Act, the application for leave to contest was not liable to be granted. The application seeking leave to contest the petition under Section 13-A of the Act having not been filed within time as has been stipulated in the statute itself as a condition precedent for the Rent Controller to proceed further to enquire the merits in defence, the Rent Controller is obliged under the constraining influence of compulsion statutorily cast upon it to pass an order of eviction in the manner envisaged under Section 13-A of the Act."

When a latest well considered judgment of this Court is available on the point in issue, I do not consider it appropriate to entertain the present petition challenging the order passed by the Rent Controller whereby the application under Section 5 of the Limitation Act for condonation of delay in filing the application for leave to defend was rejected. Once the settled position being that the provisions of Limitation Act are not applicable for filing the application for leave to defend, the only possible conclusion can be that the present petition is meritless and deserves dismissal.

Accordingly, the petition is dismissed in limine.

August 14, 2007 **(RAJESH BINDAL)**
renu **JUDGE**